



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-99-107-51765 Office: Vermont Service Center

Date:

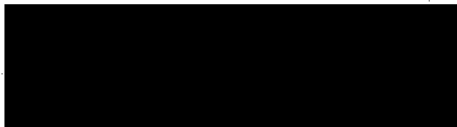
AUG 3 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a gassala. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation; or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a thirty-eight-year-old married female native and citizen of India. The petitioner indicated that the

beneficiary entered the United States as a visitor on July 17, 1991 and that her authorized period of admission expired on January 16, 1992. The petitioner did not indicate whether the beneficiary had ever worked in the United States without permission.

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on February 10, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from February 10, 1997 to February 10, 1999.

In its letter dated December 6, 1998, the petitioner stated that the beneficiary "was employed on a full time basis by our association beginning [in] about September 1996 . . . [She] has been paid to the sum of 300 dollars per week . . . [She was] paid on a cash basis." The petitioner submitted a photocopy of the beneficiary's 1997 federal income tax return. According to this return, the beneficiary and her spouse received all of their income from her spouse's catering business. The petitioner also submitted a photocopy of its 1997 federal income tax return. According to this return, the petitioner did not pay any salaries that year.

On June 15, 1999, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary:

began working with us on [or] about three years ago and she is now receiving \$300.00 per week . . . she was paid by cash from the general treasury and coffers of our association and our Treasurer is capable of providing information concerning her payments in that manner.

The petitioner submitted a photocopy of its 1998 federal income tax return. According to this return, the petitioner did not pay any salaries that year.

On appeal, the petitioner states that the beneficiary "received in cash \$4,800 in 1996 and \$4,800 in 1997. We are including copies of

the receipts for the money she received as compensation." The petitioner submits photocopies of 24 receipts issued on a monthly basis from January 1996 to December 1997. These receipts are in numerical order, and purport that the beneficiary received \$200 per month in cash.

The statements made and evidence submitted on appeal are contradictory to statements made and evidence submitted prior to the director's decision. The petitioner had claimed that, beginning in September 1996, the beneficiary received a weekly salary of \$300 (approximately \$15,600 annually). On appeal, the petitioner is claiming that the beneficiary received an annual salary of \$4,800, and is submitting evidence that the beneficiary received a monthly salary of \$200 (approximately \$2,400 annually). The petitioner has not explained this discrepancy. Also, the petitioner's tax returns do not list any salaries paid during 1997 or 1998; and, the beneficiary did not include any of her purported income on her 1997 tax return. Accordingly, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from February 10, 1997 to February 10, 1999. The objection of the director has not been overcome on appeal.

Beyond the decision of the director, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the ground discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.